

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 409 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? -

2. To be referred to the Reporter or not?- :

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? -

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? -

5. Whether it is to be circulated to the Civil Judge? : NO
-

JB SHAH

Versus

SUNDARAM ASSOCIATION & 2

Appearance:

MR PV NANAVATI for Petitioners

MR BHARAT J SHELAT for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 23/03/2000

ORAL JUDGEMENT

This revision application has been preferred
against the judgment and decree dated 18-02-1994 passed
by the Small Causes Court, Ahmedabad dismissing H.R.

Petition No. 2866/84 and that has been confirmed by the Appellate Bench of the Small Causes Court, Ahmedabad vide judgment and order dated 9-2-1995 passed in H.R.P. Appeal No. 42 of 1994.

2. The petitioner filed H.R. Petition for permanent injunction restraining the respondent - defendant from taking over the possession of the open land from him forcibly and also from disturbing the petitioner's possession.

3. According to the petitioner - plaintiff, there is a building known as "Ganatra Building" on final plot No. 124/1/A of T.P. Scheme No. 4, Khokhara Mahemdavad and it is a trust property. One Mangiram was holding the power of attorney to collect rent from the tenants of that "Ganatra Building". That building was sold to three different associations. The respondent association is concerned with the portion which was allegedly rented to the petitioner and the petitioner was in possession. There were about 43 tenants of the aforesaid building. Besides other tenants, two trustees were also residing in the compound of the aforesaid building. The plaintiff stated that he was carrying on business of motor driving school and for that purpose he required some open land for the motor vehicles, trucks, accessories, motor car chassis of truck to be kept with him in order to demonstrate to the students. He was also carrying on the business of hiring the luxury buses, motor cars. The petitioner used to keep the aforesaid vehicles in the disputed open space behind "Ganatra Building" within that compound. One of the trustees was also residing in that property. The plaintiff also stated that he has been in possession of the said open land since 1961 and he is also a tenant of one shop bearing No. 59/10 on the ground floor and two rooms 59/6 and 59/7 on the first floor of the same building. After leaving margin land of 35 feet, the disputed property is situated where the petitioner used to keep his vehicles etc. and he was also paying municipal tax of Rs.40/p.m. for the use of that land. The receipts were executed by said Mangiram Collector for the rent vide exh. 62 and exh. 63. Receipt exh. 62 is pertaining to the period from 1-1-1972 to 31-12-72. Whereas receipt exh. 63 relates to the period from 1-1-1973 to 30-4-1973.

3. Finding an advertisement published in the daily newspaper "Sandesh" dated 8-8-94 inviting the objections against the property in question, the petitioner made claim with respect to tenancy rights over the disputed land. He also apprehended that he might be forcibly

dispossessed from the disputed property and therefore he filed aforesaid civil suit on 24-8-1984 and the Court Commissioner was appointed for local inspection of the disputed property on the same day i.e. 24-8-1984. The Court Commissioner visited the suit property on 27-8-1984 and he found the vehicles namely rickshaw, trucks, luxury buses, chassis of the truck etc. on the land in dispute. He also noted that the broken bodies of the trucks, the motor vehicles and tyre tubes were also lying there.

4. The original defendant filed written statement exh. 15 and denied all the allegations made by the petitioner - plaintiff in the plaint. He also denied that the suit property was rented to the petitioner.

5. The new purchaser also filed written statement vide exh.34 asserting that he has become the owner of the disputed property on 29-5-1986 and denied possession of the petitioner on the disputed property as a tenant. The Judge of the Small Causes Court, Ahmedabad, dismissed the suit by the judgment and order dated 25-2-1984 holding that the plaintiff - petitioner has failed to prove that he is a tenant of the disputed plot of land. Being aggrieved by the said judgment and order dated 25-2-1984 of the Small Causes Judge, Ahmedabad, the plaintiff petitioner filed Civil Appeal No. 42 of 1994 before the Appellate Bench of the Small Causes Court, Ahmedabad and the said Appellate Bench after considering the submissions made on behalf of the parties and the material on record confirmed the judgment and order of the Judge, Small Causes Court, Ahmedabad vide judgment and order dated 9-2-95 and against that judgment and order of the Appellate Bench, Small Causes Court, Ahmedabad the petitioner has filed the present revision application u/s 29 (2) of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947.

6. Learned counsel for the petitioner contended mainly that the Courts below have committed an error in drawing adverse inference of non-examination of one of the trustees namely Dolatram Devji Ganatra who was also living in the compound of the same building. Daughter of the settler of the trustees was also residing in the same building at the relevant time. Both the Courts also failed to draw adverse inference that the petitioner was tenant on the ground floor shop bearing No. 59/10 and was also tenant of two rooms No.59/6 and 57/7 on the first floor of the premises. Mangiram a person having the power of attorney was accordingly collecting the rent from 1963 to April 1973. The Courts below have misinterpreted exh. 60 and 61 showing the possession of

the disputed land to the public authority like Regional Transport Officer (R.T.O.). The said licence of motor driving school was required to be renewed at the interval of every three years and provisions of the keeping equipments for technical education is to be satisfied at the time of inspection of the site when the authorities come for inspection. The petitioner was carrying on the business in the name and style of "New Peoples' Driving School" in the building since 1962 onwards. The Courts below committed the error in rejecting the rent receipts exh. 62 and 63 on the ground that the same were signed by the son of Mangiram who has the power of authority and rent Collector of the building upto 1973. Said Mangiram deposed in his examination that he was collecting the rent on behalf of his father. One of the trustees residing in the same building has not raised any objection for keeping permanently the vehicles of the petitioners. Dolatray Devji Ganatra filed written statement has not been examined to corroborate the written statement filed by them at exh. 15 and the version of the new purchaser who was examined on behalf of the defendants. The Courts below erroneously rejected the petitioners' claim on the ground that they have not exclusively proved that they were in possession of the disputed property as tenants and the land was being used for the purpose of ingress and egress. The Court Commissioner's report along with the map exh. 77 clearly establishes that there were three roads ingress and egress to the main property. The petitioner approaches the suit land from the rear portion of the shop on the ground by walking over margin land and thereafter on the disputed land. The Courts below have also misread the map prepared by the Court Commissioner and there was barbed wire fencing of 11 feet. After that margin land the plaintiff claims the disputed land in his possession as a tenant. The appellate Court erred in drawing the adverse inference from the amount of the rent which was to be remitted by Mangiram to the trustees and erroneously came to the conclusion that as per the agreement he was to collect the rent of the suit premises to the tune of Rs.1250/- p.m. out of which he was required to remit Rs. 1100/- to the trustees only. The Courts below have also erred in drawing inference that the plaintiff - petitioner has not been able to produce the rent receipts signed by Mangiram and he is not able to prove the main receipt prior to 1972 and thereafter. In absence of statement of Jadavji or Dolatray Devji Ganatra. The Courts below ought to have drawn an adverse inference against the respondents. The petitioner has proved his tenancy rights by documentary as well as oral evidence and that has not been rebutted by any person.

It is also contended that if any person is in peaceful possession for a long time cannot be dispossessed without due process of law and the petitioner was in possession of the disputed property since 1962 and he cannot be dispossessed without following due process of law. In support of his contention, learned counsel for the petitioner relied on the decision of the Supreme Court reported in AIR 1989 SC 297.

7. Learned counsel for the petitioner contended that the petitioner is in possession of the disputed property since 1961 and he is doing the business of motor driving school and for that purpose the petitioner was using the open land in dispute by keeping the vehicles as well as chassis of the truck etc. The petitioner was also paying rent at the rate of Rs. 40/- p.m. to the person holding the power of attorney. Two receipts issued by the person holding the power of attorney have also been filed to prove the possession of the petitioner. The Courts below have misread the evidence and have not drawn the adverse inference against the respondent in absence of the deposition of the trustee residing in the same building.

8. I have considered the contentions made on behalf of the parties and gone through the material on record. The concurrent findings have been recorded by the Courts below that the petitioner has not been able to prove his possession on the basis of tenancy and he is not in exclusive possession as alleged by the petitioner either as a tenant or in any other capacity. The Courts below have examined the entire evidence from all corners and have come to the conclusion that the petitioner has miserably failed to prove possession on the basis of the tenancy rights and no right could be proved by the petitioner. The rent receipts produced by the plaintiff are not corroborated by any independent evidence and the conclusion of the lower appellate Court was that the plot of land in dispute was never let out to the plaintiff petitioner and the petitioner was never remained in possession as a tenant of the suit premises. The person namely Mangiram having power of attorney was collecting the rent from the tenants of "Ganatra Building" and was also issuing receipts to the tenants and he was also given the power of attorney to take action against the defaulting tenants in the Courts also. He had also power to induct new tenant in the disputed building in place of the tenant who vacates the premises and he was required to pay Rs.1100/- p.m. to the trustees out of collected rent of Rs.1250/- p.m. Out of that amount, Rs. 1100/were to be paid to the trustees and he had power to retain Rs.150/- p.m. towards the entrusted work done by

him. According to the petitioner, he was paying Rs.40/p.m. towards rent in respect of the open space rented to him. That amount is not included or mentioned in the deed of power of attorney dated 23-2-1959. Meaning thereby that the alleged open space of land in dispute was not rented to the petitioner and said Mangiram was not authorized to induct a new tenant. As such, he had no power of attorney to let out the open land to the petitioner. The lower appellate Court has discussed regarding the agreement executed from which it is clear that the open space of land in dispute was not let out to anybody. The lower Appellate Court also come to the conclusion that from the evidence of the plaintiff and other witnesses it is clear that the open land in dispute was being used by other tenants on some festivals like Diwali, Navratri etc. and that evidence discloses that the open land in dispute was not in exclusive possession of the plaintiff - petitioner. Merely because the plaintiff was keeping his vehicles on the land in dispute does not mean that any right was created in favour of the petitioner to park his vehicles on the open land in dispute as a tenant. The lower appellate Court also found the contradictory evidence. The lower appellate Court has also made observation that merely because in the R.T.O. the plaintiff showed that he was in possession and occupied the open land in dispute it cannot be said that he was in possession of the open land in dispute as a tenant and in the application of the petitioner to R.T.O. for the licence he has not stated that he had taken this land on rent and he is a tenant of that land. Both the Courts have disbelieved the receipts exh. 62 and 63 and created doubt about genuineness of these two receipts. The lower appellate Court did not find any error committed by the Trial Court in refusing to grant permanent injunction as prayed for by the plaintiff appellant. As the petitioner - plaintiff has miserably failed to establish that he was in possession of the disputed land as a tenant.

9. I have considered the contentions made by the learned counsel for the parties and perused the conclusions based on the reasoning arrived at by the Courts below. I could be unable to differ from the same. Under the provisions of Section 101 and 102 of the Evidence Act whenever any person reserves to give the judgment as to any legal right or liability depend on the existing facts which he must prove those facts in existence and burden of proof in the suit of tenancy proceedings lies on that person, he will fail if no evidence at all is given by either side. In the present case, the evidence adduced by the plaintiff is

disbelieved by the trial Court and that has been confirmed by the lower appellate Court. The petitioner could not prove that he is the tenant of open space which is being used by occupants of the buildings occasionally on festivals like Diwali, Navratri etc. The petitioner could not also prove that he was not in exclusive possession of that disputed property. Merely because he was using the land in dispute by parking certain vehicles he will not become the tenant of that land.

10. As such, I do not find any merit in this revision application. Accordingly, this Revision Application is dismissed. Rule is discharged with no order as to costs. Interim relief, if any stands, vacated.

11. In the last, learned counsel for the petitioner requested this Court to grant three months' time to approach before the higher forum. I do not find any good reason to grant such time. Hence, the request of the learned counsel for the petitioner is refused.

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/JVSatwara/